

1                   A bill to be entitled  
2           An act relating to dispute resolution; amending s.  
3           682.01, F.S.; revising the short title of the "Florida  
4           Arbitration Code" to the "Revised Florida Arbitration  
5           Code"; creating s. 682.011, F.S.; providing  
6           definitions; creating s. 682.012, F.S.; specifying how  
7           a person gives notice to another person and how a  
8           person receives notice; creating s. 682.013, F.S.;  
9           specifying the applicability of the revised code;  
10          creating s. 682.014, F.S.; providing that an agreement  
11          may waive or vary the effect of statutory arbitration  
12          provisions; providing exceptions; creating s. 682.015,  
13          F.S.; providing for petitions for judicial relief;  
14          providing for service of notice of an initial petition  
15          for such relief; amending s. 682.02, F.S.; revising  
16          provisions relating to the making of arbitration  
17          agreements; requiring a court to decide whether an  
18          agreement to arbitrate exists or a controversy is  
19          subject to an agreement to arbitrate; providing for  
20          determination of specified issues by an arbitrator;  
21          providing for continuation of an arbitration  
22          proceeding pending resolution of certain issues by a  
23          court; revising provisions relating to applicability  
24          of provisions to certain interlocal agreements;  
25          amending s. 682.03, F.S.; revising provisions relating  
26          to proceedings to compel and to stay arbitration;  
27          creating s. 682.031, F.S.; providing for a court to  
28          order provisional remedies before an arbitrator is

29 appointed and is authorized and able to act; providing  
30 for orders for provisional remedies by an arbitrator;  
31 providing that a party does not waive a right of  
32 arbitration by seeking provisional remedies in court;  
33 creating s. 682.032, F.S.; providing for initiation of  
34 arbitration; providing that a person waives any  
35 objection to lack of or insufficiency of notice by  
36 appearing at the arbitration hearing; providing an  
37 exception; creating s. 682.033, F.S.; providing for  
38 consolidation of separate arbitration proceedings as  
39 to all or some of the claims in certain circumstances;  
40 prohibiting consolidation if the agreement prohibits  
41 consolidation; amending s. 682.04, F.S.; revising  
42 provisions relating to appointment of an arbitrator;  
43 prohibiting an individual who has an interest in the  
44 outcome of an arbitration from serving as a neutral  
45 arbitrator; creating s. 682.041, F.S.; requiring  
46 certain disclosures of interests and relationships by  
47 a person before accepting appointment as an  
48 arbitrator; providing a continuing obligation to make  
49 such disclosures; providing for objections to an  
50 arbitrator based on information disclosed; providing  
51 for vacation of an award if an arbitrator failed to  
52 disclose a fact as required; providing that an  
53 arbitrator appointed as a neutral arbitrator who does  
54 not disclose certain interests or relationships is  
55 presumed to act with partiality for specified  
56 purposes; requiring parties to substantially comply

57 | with agreed-to procedures of an arbitration  
58 | organization or any other procedures for challenges to  
59 | arbitrators before an award is made in order to seek  
60 | vacation of an award on specified grounds; amending s.  
61 | 682.05, F.S.; requiring that if there is more than one  
62 | arbitrator, the powers of an arbitrator must be  
63 | exercised by a majority of the arbitrators; requiring  
64 | all arbitrators to conduct the arbitration hearing;  
65 | creating s. 682.051, F.S.; providing immunity from  
66 | civil liability for an arbitrator or an arbitration  
67 | organization acting in that capacity; providing that  
68 | this immunity is supplemental to any immunity under  
69 | other law; providing that failure to make a required  
70 | disclosure does not remove immunity; providing that an  
71 | arbitrator or representative of an arbitration  
72 | organization is not competent to testify and may not  
73 | be required to produce records concerning the  
74 | arbitration; providing exceptions; providing for  
75 | awarding an arbitrator, arbitration organization, or  
76 | representative of an arbitration organization with  
77 | reasonable attorney fees and expenses of litigation  
78 | under certain circumstances; amending s. 682.06, F.S.;  
79 | revising provisions relating to the conduct of  
80 | arbitration hearings; providing for summary  
81 | disposition, notice of hearings, adjournment, and  
82 | rights of a party to the arbitration proceeding;  
83 | requiring appointment of a replacement arbitrator in  
84 | certain circumstances; amending s. 682.07, F.S.;

85 providing that a party to an arbitration proceeding  
86 may be represented by an attorney; amending s. 682.08,  
87 F.S.; revising provisions relating to the issuance,  
88 service, and enforcement of subpoenas; revising  
89 provisions relating to depositions; authorizing an  
90 arbitrator to permit discovery in certain  
91 circumstances; authorizing an arbitrator to order  
92 compliance with discovery; authorizing protective  
93 orders by an arbitrator; providing for applicability  
94 of laws compelling a person under subpoena to testify  
95 and all fees for attending a judicial proceeding, a  
96 deposition, or a discovery proceeding as a witness;  
97 providing for court enforcement of a subpoena or  
98 discovery-related order; providing for witness fees;  
99 creating s. 682.081, F.S.; providing for judicial  
100 enforcement of a preaward ruling by an arbitrator in  
101 certain circumstances; providing exceptions; amending  
102 s. 682.09, F.S.; revising provisions relating to the  
103 record needed for an award; revising provisions  
104 relating to the time within which an award must be  
105 made; amending s. 682.10, F.S.; revising provisions  
106 relating to requirements for a motion to modify or  
107 correct an award; amending s. 682.11, F.S.; revising  
108 provisions relating to fees and expenses of  
109 arbitration; authorizing punitive damages and other  
110 exemplary relief and remedies; amending s. 682.12,  
111 F.S.; revising provisions relating to confirmation of  
112 an award; amending s. 682.13, F.S.; revising

113 provisions relating to grounds for vacating an award;  
114 revising provisions relating to a motion for vacating  
115 an award; providing for a rehearing in certain  
116 circumstances; amending s. 682.14, F.S.; revising  
117 provisions relating to the time for moving to modify  
118 or correct an award; deleting references to the term  
119 "umpire"; revising a provision concerning confirmation  
120 of awards; amending s. 682.15, F.S.; revising  
121 provisions relating to a court order confirming,  
122 vacating without directing a rehearing, modifying, or  
123 correcting an award; providing for award of costs and  
124 attorney fees in certain circumstances; repealing s.  
125 682.16, F.S., relating to judgment roll and docketing  
126 of certain orders; repealing s. 682.17, F.S., relating  
127 to application to court; repealing s. 682.18, F.S.,  
128 relating to the definition of the term "court" and  
129 jurisdiction; creating s. 682.181, F.S.; providing for  
130 jurisdiction relating to the revised code; amending s.  
131 682.19, F.S.; revising provisions relating to venue  
132 for actions relating to the code; amending s. 682.20,  
133 F.S.; providing that an appeal may be taken from an  
134 order denying confirmation of an award unless the  
135 court has entered an order under specified provisions;  
136 providing that all other orders denying confirmation  
137 of an award are final orders; repealing s. 682.21,  
138 F.S., relating to the previous code not applying  
139 retroactively; repealing s. 682.22, F.S., relating to  
140 conflict of laws; creating s. 682.23, F.S.; specifying

CS/HB 963

2012

141 the relationship of the code to the Electronic  
142 Signatures in Global and National Commerce Act;  
143 providing for applicability; creating s. 682.25, F.S.;  
144 providing that the revised code does not apply to any  
145 dispute involving child custody, visitation, or child  
146 support; amending s. 44.104, F.S.; deleting references  
147 to binding arbitration from provisions providing for  
148 voluntary trial resolution; providing for temporary  
149 relief; revising provisions relating to procedures in  
150 voluntary trial resolution; providing that a judgment  
151 is reviewable in the same manner as a judgment in a  
152 civil action; deleting provisions relating to  
153 applicability of the harmless error doctrine;  
154 providing limitations on the jurisdiction of a trial  
155 resolution judge; providing for the use of juries;  
156 amending s. 44.107, F.S.; providing immunity for  
157 voluntary trial resolution judges serving under  
158 specified provisions; amending ss. 440.1926, 489.1402,  
159 and 731.401, F.S.; conforming cross-references;  
160 providing a directive to the Division of Statutory  
161 Revision to redesignate the title of ch. 44, F.S., as  
162 "Alternative Dispute Resolution"; providing an  
163 effective date.

164

165 Be It Enacted by the Legislature of the State of Florida:

166

167 Section 1. Section 682.01, Florida Statutes, is amended to  
168 read:

169            682.01 Short title Florida Arbitration Code.—This chapter  
 170 Sections 682.01-682.22 may be cited as the "Revised Florida  
 171 Arbitration Code."

172            Section 2. Section 682.011, Florida Statutes, is created  
 173 to read:

174            682.011 Definitions.—As used in this chapter, the term:

175            (1) "Arbitration organization" means an association,  
 176 agency, board, commission, or other entity that is neutral and  
 177 initiates, sponsors, or administers an arbitration proceeding or  
 178 is involved in the appointment of an arbitrator.

179            (2) "Arbitrator" means an individual appointed to render  
 180 an award, alone or with others, in a controversy that is subject  
 181 to an agreement to arbitrate.

182            (3) "Court" means a court of competent jurisdiction in  
 183 this state.

184            (4) "Knowledge" means actual knowledge.

185            (5) "Person" means an individual, corporation, business  
 186 trust, estate, trust, partnership, limited liability company,  
 187 association, joint venture, or government; governmental  
 188 subdivision, agency, or instrumentality; public corporation; or  
 189 any other legal or commercial entity.

190            (6) "Record" means information that is inscribed on a  
 191 tangible medium or that is stored in an electronic or other  
 192 medium and is retrievable in perceivable form.

193            Section 3. Section 682.012, Florida Statutes, is created  
 194 to read:

195            682.012 Notice.—

196            (1) Except as otherwise provided in this chapter, a person

197 gives notice to another person by taking action that is  
198 reasonably necessary to inform the other person in ordinary  
199 course, whether or not the other person acquires knowledge of  
200 the notice.

201 (2) A person has notice if the person has knowledge of the  
202 notice or has received notice.

203 (3) A person receives notice when it comes to the person's  
204 attention or the notice is delivered at the person's place of  
205 residence or place of business, or at another location held out  
206 by the person as a place of delivery of such communications.

207 Section 4. Section 682.013, Florida Statutes, is created  
208 to read:

209 682.013 Applicability of revised code.—

210 (1) The Revised Florida Arbitration Code governs an  
211 agreement to arbitrate made on or after July 1, 2012.

212 (2) The Revised Florida Arbitration Code governs an  
213 agreement to arbitrate made before July 1, 2012, if all the  
214 parties to the agreement or to the arbitration proceeding so  
215 agree in a record. Otherwise, such agreements shall be governed  
216 by the applicable law existing at the time the parties entered  
217 into the agreement.

218 (3) The Revised Florida Arbitration Code does not affect  
219 an action or proceeding commenced or right accrued before July  
220 1, 2012.

221 (4) Beginning July 1, 2015, an agreement to arbitrate  
222 shall be subject to the then-applicable law governing agreements  
223 to arbitrate.

224 Section 5. Section 682.014, Florida Statutes, is created



CS/HB 963

2012

225 to read:

226 682.014 Effect of agreement to arbitrate; nonwaivable  
227 provisions.-

228 (1) Except as otherwise provided in subsections (2) and  
229 (3), a party to an agreement to arbitrate or to an arbitration  
230 proceeding may waive, or the parties may vary the effect of, the  
231 requirements of this chapter to the extent permitted by law.

232 (2) Before a controversy arises that is subject to an  
233 agreement to arbitrate, a party to the agreement may not:

234 (a) Waive or agree to vary the effect of the requirements  
235 of:

236 1. Commencing a petition for judicial relief under s.  
237 682.015(1);

238 2. Making agreements to arbitrate valid, enforceable, and  
239 irrevocable under s. 682.02(1);

240 3. Permitting provisional remedies under s. 682.031;

241 4. Conferring authority on arbitrators to issue subpoenas  
242 and permit depositions under s. 682.08(1) or (2);

243 5. Conferring jurisdiction under s. 682.181; or

244 6. Stating the bases for appeal under s. 682.20;

245 (b) Agree to unreasonably restrict the right under s.  
246 682.032 to notice of the initiation of an arbitration  
247 proceeding;

248 (c) Agree to unreasonably restrict the right under s.  
249 682.041 to disclosure of any facts by a neutral arbitrator; or

250 (d) Waive the right under s. 682.07 of a party to an  
251 agreement to arbitrate to be represented by an attorney at any  
252 proceeding or hearing under this chapter, but an employer and a

253 labor organization may waive the right to representation by an  
 254 attorney in a labor arbitration.

255 (3) A party to an agreement to arbitrate or arbitration  
 256 proceeding may not waive, or the parties may not vary the effect  
 257 of, the requirements in this section or:

258 (a) The applicability of this chapter, the Revised Florida  
 259 Arbitration Code, under s. 682.013(1) or (4);

260 (b) The availability of proceedings to compel or stay  
 261 arbitration under s. 682.03;

262 (c) The immunity conferred on arbitrators and arbitration  
 263 organizations under s. 682.051;

264 (d) A party's right to seek judicial enforcement of an  
 265 arbitration preaward ruling under s. 682.081;

266 (e) The authority conferred on an arbitrator to change an  
 267 award under s. 682.10(4) or (5);

268 (f) The remedies provided under s. 682.12;

269 (g) The grounds for vacating an arbitration award under s.  
 270 682.13;

271 (h) The grounds for modifying an arbitration award under  
 272 s. 682.14;

273 (i) The validity and enforceability of a judgment or  
 274 decree based on an award under s. 682.15(1) or (2);

275 (j) The validity of the Electronic Signatures in Global  
 276 and National Commerce Act under s. 682.23; or

277 (k) The excluded disputes involving child custody,  
 278 visitation, or child support under s. 682.25.

279 Section 6. Section 682.015, Florida Statutes, is created  
 280 to read:

281 682.015 Petition for judicial relief.-

282 (1) Except as otherwise provided in s. 682.20, a petition  
 283 for judicial relief under this chapter must be made to the court  
 284 and heard in the manner provided by law or rule of court for  
 285 making and hearing motions.

286 (2) Unless a civil action involving the agreement to  
 287 arbitrate is pending, notice of an initial petition to the court  
 288 under this chapter must be served in the manner provided by law  
 289 for the service of a summons in a civil action. Otherwise,  
 290 notice of the motion must be given in the manner provided by law  
 291 or rule of court for serving motions in pending cases.

292 Section 7. Section 682.02, Florida Statutes, is amended to  
 293 read:

294 682.02 Arbitration agreements made valid, irrevocable, and  
 295 enforceable; scope.-

296 (1) An agreement contained in a record to submit to  
 297 arbitration any existing or subsequent controversy arising  
 298 between the parties to the agreement is valid, enforceable, and  
 299 irrevocable except upon a ground that exists at law or in equity  
 300 for the revocation of a contract.

301 (2) The court shall decide whether an agreement to  
 302 arbitrate exists or a controversy is subject to an agreement to  
 303 arbitrate.

304 (3) An arbitrator shall decide whether a condition  
 305 precedent to arbitrability has been fulfilled and whether a  
 306 contract containing a valid agreement to arbitrate is  
 307 enforceable.

308 (4) If a party to a judicial proceeding challenges the

309 existence of, or claims that a controversy is not subject to, an  
 310 agreement to arbitrate, the arbitration proceeding may continue  
 311 pending final resolution of the issue by the court, unless the  
 312 court otherwise orders.

313 ~~(5) Two or more parties may agree in writing to submit to~~  
 314 ~~arbitration any controversy existing between them at the time of~~  
 315 ~~the agreement, or they may include in a written contract a~~  
 316 ~~provision for the settlement by arbitration of any controversy~~  
 317 ~~thereafter arising between them relating to such contract or the~~  
 318 ~~failure or refusal to perform the whole or any part thereof.~~

319 This section also applies to written interlocal agreements under  
 320 ss. 163.01 and 373.713 in which two or more parties agree to  
 321 submit to arbitration any controversy between them concerning  
 322 water use permit motions ~~applications~~ and other matters,  
 323 regardless of whether or not the water management district with  
 324 jurisdiction over the subject motion ~~application~~ is a party to  
 325 the interlocal agreement or a participant in the arbitration.  
 326 ~~Such agreement or provision shall be valid, enforceable, and~~  
 327 ~~irrevocable without regard to the justiciable character of the~~  
 328 ~~controversy; provided that this act shall not apply to any such~~  
 329 ~~agreement or provision to arbitrate in which it is stipulated~~  
 330 ~~that this law shall not apply or to any arbitration or award~~  
 331 ~~thereunder.~~

332 Section 8. Section 682.03, Florida Statutes, is amended to  
 333 read:

334 682.03 Proceedings to compel and to stay arbitration.—

335 (1) On motion of a person showing an agreement to  
 336 arbitrate and alleging another person's refusal to arbitrate

337 pursuant to the agreement:

338 (a) If the refusing party does not appear or does not  
339 oppose the motion, the court shall order the parties to  
340 arbitrate.

341 (b) If the refusing party opposes the motion, the court  
342 shall proceed summarily to decide the issue and order the  
343 parties to arbitrate unless it finds that there is no  
344 enforceable agreement to arbitrate. A party to an agreement or  
345 provision for arbitration subject to this law claiming the  
346 neglect or refusal of another party thereto to comply therewith  
347 may make application to the court for an order directing the  
348 parties to proceed with arbitration in accordance with the terms  
349 thereof. If the court is satisfied that no substantial issue  
350 exists as to the making of the agreement or provision, it shall  
351 grant the application. If the court shall find that a  
352 substantial issue is raised as to the making of the agreement or  
353 provision, it shall summarily hear and determine the issue and,  
354 according to its determination, shall grant or deny the  
355 application.

356 (2) On motion of a person alleging that an arbitration  
357 proceeding has been initiated or threatened but that there is no  
358 agreement to arbitrate, the court shall proceed summarily to  
359 decide the issue. If the court finds that there is an  
360 enforceable agreement to arbitrate, it shall order the parties  
361 to arbitrate. If an issue referable to arbitration under an  
362 agreement or provision for arbitration subject to this law  
363 becomes involved in an action or proceeding pending in a court  
364 having jurisdiction to hear an application under subsection (1),

365 ~~such application shall be made in said court. Otherwise and~~  
 366 ~~subject to s. 682.19, such application may be made in any court~~  
 367 ~~of competent jurisdiction.~~

368 (3) If the court finds that there is no enforceable  
 369 agreement to arbitrate, it may not order the parties to  
 370 arbitrate pursuant to subsection (1) or subsection (2). ~~Any~~  
 371 ~~action or proceeding involving an issue subject to arbitration~~  
 372 ~~under this law shall be stayed if an order for arbitration or an~~  
 373 ~~application therefor has been made under this section or, if the~~  
 374 ~~issue is severable, the stay may be with respect thereto only.~~  
 375 ~~When the application is made in such action or proceeding, the~~  
 376 ~~order for arbitration shall include such stay.~~

377 (4) The court may not refuse to order arbitration because  
 378 the claim subject to arbitration lacks merit or grounds for the  
 379 claim have not been established. ~~On application the court may~~  
 380 ~~stay an arbitration proceeding commenced or about to be~~  
 381 ~~commenced, if it shall find that no agreement or provision for~~  
 382 ~~arbitration subject to this law exists between the party making~~  
 383 ~~the application and the party causing the arbitration to be had.~~  
 384 ~~The court shall summarily hear and determine the issue of the~~  
 385 ~~making of the agreement or provision and, according to its~~  
 386 ~~determination, shall grant or deny the application.~~

387 (5) If a proceeding involving a claim referable to  
 388 arbitration under an alleged agreement to arbitrate is pending  
 389 in court, a motion under this section must be made in that  
 390 court. Otherwise, a motion under this section may be made in any  
 391 court as provided in s. 682.19. ~~An order for arbitration shall~~  
 392 ~~not be refused on the ground that the claim in issue lacks merit~~

393 ~~or bona fides or because any fault or grounds for the claim~~  
 394 ~~sought to be arbitrated have not been shown.~~

395 (6) If a party makes a motion to the court to order  
 396 arbitration, the court on just terms shall stay any judicial  
 397 proceeding that involves a claim alleged to be subject to the  
 398 arbitration until the court renders a final decision under this  
 399 section.

400 (7) If the court orders arbitration, the court on just  
 401 terms shall stay any judicial proceeding that involves a claim  
 402 subject to the arbitration. If a claim subject to the  
 403 arbitration is severable, the court may limit the stay to that  
 404 claim.

405 Section 9. Section 682.031, Florida Statutes, is created  
 406 to read:

407 682.031 Provisional remedies.—

408 (1) Before an arbitrator is appointed and is authorized  
 409 and able to act, the court, upon motion of a party to an  
 410 arbitration proceeding and for good cause shown, may enter an  
 411 order for provisional remedies to protect the effectiveness of  
 412 the arbitration proceeding to the same extent and under the same  
 413 conditions as if the controversy were the subject of a civil  
 414 action.

415 (2) After an arbitrator is appointed and is authorized and  
 416 able to act:

417 (a) The arbitrator may issue such orders for provisional  
 418 remedies, including interim awards, as the arbitrator finds  
 419 necessary to protect the effectiveness of the arbitration  
 420 proceeding and to promote the fair and expeditious resolution of

421 the controversy, to the same extent and under the same  
422 conditions as if the controversy were the subject of a civil  
423 action.

424 (b) A party to an arbitration proceeding may move the  
425 court for a provisional remedy only if the matter is urgent and  
426 the arbitrator is not able to act timely or the arbitrator  
427 cannot provide an adequate remedy.

428 (3) A party does not waive a right of arbitration by  
429 making a motion under this section.

430 (4) If an arbitrator awards a provisional remedy for  
431 injunctive or equitable relief, the arbitrator shall state in  
432 the award the factual findings and legal basis for the award.

433 (5) A party may seek to confirm or vacate a provisional  
434 remedy award for injunctive or equitable relief under s.  
435 682.081.

436 Section 10. Section 682.032, Florida Statutes, is created  
437 to read:

438 682.032 Initiation of arbitration.—

439 (1) A person initiates an arbitration proceeding by giving  
440 notice in a record to the other parties to the agreement to  
441 arbitrate in the agreed manner between the parties or, in the  
442 absence of agreement, by certified or registered mail, return  
443 receipt requested and obtained, or by service as authorized for  
444 the commencement of a civil action. The notice must describe the  
445 nature of the controversy and the remedy sought.

446 (2) Unless a person objects for lack or insufficiency of  
447 notice under s. 682.06(3) not later than the beginning of the  
448 arbitration hearing, the person by appearing at the hearing



CS/HB 963

2012

449 waives any objection to lack of or insufficiency of notice.

450 Section 11. Section 682.033, Florida Statutes, is created  
451 to read:

452 682.033 Consolidation of separate arbitration  
453 proceedings.—

454 (1) Except as otherwise provided in subsection (3), upon  
455 motion of a party to an agreement to arbitrate or to an  
456 arbitration proceeding, the court may order consolidation of  
457 separate arbitration proceedings as to all or some of the claims  
458 if:

459 (a) There are separate agreements to arbitrate or separate  
460 arbitration proceedings between the same persons or one of them  
461 is a party to a separate agreement to arbitrate or a separate  
462 arbitration proceeding with a third person;

463 (b) The claims subject to the agreements to arbitrate  
464 arise in substantial part from the same transaction or series of  
465 related transactions;

466 (c) The existence of a common issue of law or fact creates  
467 the possibility of conflicting decisions in the separate  
468 arbitration proceedings; and

469 (d) Prejudice resulting from a failure to consolidate is  
470 not outweighed by the risk of undue delay or prejudice to the  
471 rights of or hardship to parties opposing consolidation.

472 (2) The court may order consolidation of separate  
473 arbitration proceedings as to some claims and allow other claims  
474 to be resolved in separate arbitration proceedings.

475 (3) The court may not order consolidation of the claims of  
476 a party to an agreement to arbitrate if the agreement prohibits

477 consolidation.

478 Section 12. Section 682.04, Florida Statutes, is amended  
479 to read:

480 682.04 Appointment of arbitrators by court.—

481 (1) If the parties to an agreement to arbitrate agree on  
482 ~~or provision for arbitration subject to this law provides a~~  
483 ~~method for appointing the appointment of arbitrators or an~~  
484 ~~umpire, this method must shall be followed, unless the method~~  
485 ~~fails.~~

486 (2) The court, on application of a party to an arbitration  
487 agreement, shall appoint one or more arbitrators, if:

488 (a) The parties have not agreed on a method;

489 (b) The agreed method fails;

490 (c) One or more of the parties failed to respond to the  
491 demand for arbitration; or

492 (d) An arbitrator fails to act and a successor has not  
493 been appointed.

494 ~~(3) In the absence thereof, or if the agreed method fails~~  
495 ~~or for any reason cannot be followed, or if an arbitrator or~~  
496 ~~umpire who has been appointed fails to act and his or her~~  
497 ~~successor has not been duly appointed, the court, on application~~  
498 ~~of a party to such agreement or provision shall appoint one or~~  
499 ~~more arbitrators or an umpire. An arbitrator or umpire so~~  
500 ~~appointed has all the shall have like powers of an arbitrator~~  
501 ~~designated as if named or provided for in the agreement to~~  
502 ~~arbitrate appointed pursuant to the agreed method or provision.~~

503 (4) An individual who has a known, direct, and material  
504 interest in the outcome of the arbitration proceeding or a

505 known, existing, and substantial relationship with a party may  
506 not serve as an arbitrator required by an agreement to be  
507 neutral.

508 Section 13. Section 682.041, Florida Statutes, is created  
509 to read:

510 682.041 Disclosure by arbitrator.—

511 (1) Before accepting appointment, an individual who is  
512 requested to serve as an arbitrator, after making a reasonable  
513 inquiry, shall disclose to all parties to the agreement to  
514 arbitrate and arbitration proceeding and to any other  
515 arbitrators any known facts that a reasonable person would  
516 consider likely to affect the person's impartiality as an  
517 arbitrator in the arbitration proceeding, including:

518 (a) A financial or personal interest in the outcome of the  
519 arbitration proceeding.

520 (b) An existing or past relationship with any of the  
521 parties to the agreement to arbitrate or the arbitration  
522 proceeding, their counsel or representative, a witness, or  
523 another arbitrator.

524 (2) An arbitrator has a continuing obligation to disclose  
525 to all parties to the agreement to arbitrate and arbitration  
526 proceeding and to any other arbitrators any facts that the  
527 arbitrator learns after accepting appointment that a reasonable  
528 person would consider likely to affect the impartiality of the  
529 arbitrator.

530 (3) If an arbitrator discloses a fact required by  
531 subsection (1) or subsection (2) to be disclosed and a party  
532 timely objects to the appointment or continued service of the

CS/HB 963

2012

533 arbitrator based upon the fact disclosed, the objection may be a  
534 ground under s. 682.13(1)(b) for vacating an award made by the  
535 arbitrator.

536 (4) If the arbitrator did not disclose a fact as required  
537 by subsection (1) or subsection (2), upon timely objection by a  
538 party, the court may vacate an award under s. 682.13(1)(b).

539 (5) An arbitrator appointed as a neutral arbitrator who  
540 does not disclose a known, direct, and material interest in the  
541 outcome of the arbitration proceeding or a known, existing, and  
542 substantial relationship with a party is presumed to act with  
543 evident partiality under s. 682.13(1)(b).

544 (6) If the parties to an arbitration proceeding agree to  
545 the procedures of an arbitration organization or any other  
546 procedures for challenges to arbitrators before an award is  
547 made, substantial compliance with those procedures is a  
548 condition precedent to a motion to vacate an award on that  
549 ground under s. 682.13(1)(b).

550 Section 14. Section 682.05, Florida Statutes, is amended  
551 to read:

552 682.05 Majority action by arbitrators.—If there is more  
553 than one arbitrator, the powers of an arbitrator must be  
554 exercised by a majority of the arbitrators, but all of the  
555 arbitrators shall conduct the hearing under s. 682.06(3). ~~The~~  
556 ~~powers of the arbitrators may be exercised by a majority of~~  
557 ~~their number unless otherwise provided in the agreement or~~  
558 ~~provision for arbitration.~~

559 Section 15. Section 682.051, Florida Statutes, is created  
560 to read:

561 682.051 Immunity of arbitrator; competency to testify;  
562 attorney fees and costs.—

563 (1) An arbitrator or an arbitration organization acting in  
564 that capacity is immune from civil liability to the same extent  
565 as a judge of a court of this state acting in a judicial  
566 capacity.

567 (2) The immunity afforded under this section supplements  
568 any immunity under other law.

569 (3) The failure of an arbitrator to make a disclosure  
570 required by s. 682.041 does not cause any loss of immunity under  
571 this section.

572 (4) In a judicial, administrative, or similar proceeding,  
573 an arbitrator or representative of an arbitration organization  
574 is not competent to testify, and may not be required to produce  
575 records as to any statement, conduct, decision, or ruling  
576 occurring during the arbitration proceeding, to the same extent  
577 as a judge of a court of this state acting in a judicial  
578 capacity. This subsection does not apply:

579 (a) To the extent necessary to determine the claim of an  
580 arbitrator, arbitration organization, or representative of the  
581 arbitration organization against a party to the arbitration  
582 proceeding; or

583 (b) To a hearing on a motion to vacate an award under s.  
584 682.13(1)(a) or (b) if the movant establishes prima facie that a  
585 ground for vacating the award exists.

586 (5) If a person commences a civil action against an  
587 arbitrator, arbitration organization, or representative of an  
588 arbitration organization arising from the services of the

589 arbitrator, organization, or representative or if a person seeks  
 590 to compel an arbitrator or a representative of an arbitration  
 591 organization to testify or produce records in violation of  
 592 subsection (4), and the court decides that the arbitrator,  
 593 arbitration organization, or representative of an arbitration  
 594 organization is immune from civil liability or that the  
 595 arbitrator or representative of the organization is not  
 596 competent to testify, the court shall award to the arbitrator,  
 597 organization, or representative reasonable attorney fees and  
 598 other reasonable expenses of litigation.

599 Section 16. Section 682.06, Florida Statutes, is amended  
 600 to read:

601 682.06 Hearing.—

602 (1) An arbitrator may conduct an arbitration in such  
 603 manner as the arbitrator considers appropriate for a fair and  
 604 expeditious disposition of the proceeding. The arbitrator's  
 605 authority includes the power to hold conferences with the  
 606 parties to the arbitration proceeding before the hearing and,  
 607 among other matters, determine the admissibility, relevance,  
 608 materiality, and weight of any evidence. Unless otherwise  
 609 ~~provided by the agreement or provision for arbitration:~~

610 ~~(1)(a) The arbitrators shall appoint a time and place for~~  
 611 ~~the hearing and cause notification to the parties to be served~~  
 612 ~~personally or by registered or certified mail not less than 5~~  
 613 ~~days before the hearing. Appearance at the hearing waives a~~  
 614 ~~party's right to such notice. The arbitrators may adjourn their~~  
 615 ~~hearing from time to time upon their own motion and shall do so~~  
 616 ~~upon the request of any party to the arbitration for good cause~~

617 ~~shown, provided that no adjournment or postponement of their~~  
618 ~~hearing shall extend beyond the date fixed in the agreement or~~  
619 ~~provision for making the award unless the parties consent to a~~  
620 ~~later date. An umpire authorized to hear and decide the cause~~  
621 ~~upon failure of the arbitrators to agree upon an award shall, in~~  
622 ~~the course of his or her jurisdiction, have like powers and be~~  
623 ~~subject to like limitations thereon.~~

624 ~~(b) The arbitrators, or umpire in the course of his or her~~  
625 ~~jurisdiction, may hear and decide the controversy upon the~~  
626 ~~evidence produced notwithstanding the failure or refusal of a~~  
627 ~~party duly notified of the time and place of the hearing to~~  
628 ~~appear. The court on application may direct the arbitrators, or~~  
629 ~~the umpire in the course of his or her jurisdiction, to proceed~~  
630 ~~promptly with the hearing and making of the award.~~

631 (2) An arbitrator may decide a request for summary  
632 disposition of a claim or particular issue:

633 (a) If all interested parties agree; or

634 (b) Upon request of one party to the arbitration  
635 proceeding, if that party gives notice to all other parties to  
636 the proceeding and the other parties have a reasonable  
637 opportunity to respond. The parties are entitled to be heard, to  
638 present evidence material to the controversy and to cross-  
639 examine witnesses appearing at the hearing.

640 (3) If an arbitrator orders a hearing, the arbitrator  
641 shall set a time and place and give notice of the hearing not  
642 less than 5 days before the hearing begins. Unless a party to  
643 the arbitration proceeding makes an objection to lack or  
644 insufficiency of notice not later than the beginning of the

645 hearing, the party's appearance at the hearing waives the  
646 objection. Upon request of a party to the arbitration proceeding  
647 and for good cause shown, or upon the arbitrator's own  
648 initiative, the arbitrator may adjourn the hearing from time to  
649 time as necessary but may not postpone the hearing to a time  
650 later than that fixed by the agreement to arbitrate for making  
651 the award unless the parties to the arbitration proceeding  
652 consent to a later date. The arbitrator may hear and decide the  
653 controversy upon the evidence produced although a party who was  
654 duly notified of the arbitration proceeding did not appear. The  
655 court, on request, may direct the arbitrator to conduct the  
656 hearing promptly and render a timely decision. ~~The hearing shall~~  
657 ~~be conducted by all of the arbitrators but a majority may~~  
658 ~~determine any question and render a final award. An umpire~~  
659 ~~authorized to hear and decide the cause upon the failure of the~~  
660 ~~arbitrators to agree upon an award shall sit with the~~  
661 ~~arbitrators throughout their hearing but shall not be counted as~~  
662 ~~a part of their quorum or in the making of their award. If,~~  
663 ~~during the course of the hearing, an arbitrator for any reason~~  
664 ~~ceases to act, the remaining arbitrator, arbitrators or umpire~~  
665 ~~appointed to act as neutrals may continue with the hearing and~~  
666 ~~determination of the controversy.~~

667 (4) At a hearing under subsection (3), a party to the  
668 arbitration proceeding has a right to be heard, to present  
669 evidence material to the controversy, and to cross-examine  
670 witnesses appearing at the hearing.

671 (5) If an arbitrator ceases or is unable to act during the  
672 arbitration proceeding, a replacement arbitrator must be



673 appointed in accordance with s. 682.04 to continue the  
 674 proceeding and to resolve the controversy.

675 Section 17. Section 682.07, Florida Statutes, is amended  
 676 to read:

677 682.07 Representation by attorney.—A party to an  
 678 arbitration proceeding may ~~has the right to~~ be represented by an  
 679 attorney ~~at any arbitration proceeding or hearing under this~~  
 680 ~~law. A waiver thereof prior to the proceeding or hearing is~~  
 681 ~~ineffective.~~

682 Section 18. Section 682.08, Florida Statutes, is amended  
 683 to read:

684 682.08 Witnesses, subpoenas, depositions.—

685 (1) An arbitrator may issue a subpoena for the attendance  
 686 of a witness and for the production of records and other  
 687 evidence at any hearing and may administer oaths. A subpoena  
 688 must be served in the manner for service of subpoenas in a civil  
 689 action and, upon motion to the court by a party to the  
 690 arbitration proceeding or the arbitrator, enforced in the manner  
 691 for enforcement of subpoenas in a civil action. ~~Arbitrators, or~~  
 692 ~~an umpire authorized to hear and decide the cause upon failure~~  
 693 ~~of the arbitrators to agree upon an award, in the course of her~~  
 694 ~~or his jurisdiction, may issue subpoenas for the attendance of~~  
 695 ~~witnesses and for the production of books, records, documents~~  
 696 ~~and other evidence, and shall have the power to administer~~  
 697 ~~oaths. Subpoenas so issued shall be served, and upon application~~  
 698 ~~to the court by a party to the arbitration or the arbitrators,~~  
 699 ~~or the umpire, enforced in the manner provided by law for the~~  
 700 ~~service and enforcement of subpoenas in a civil action.~~

CS/HB 963

2012

701           (2) In order to make the proceedings fair, expeditious,  
702 and cost effective, upon request of a party to, or a witness in,  
703 an arbitration proceeding, an arbitrator may permit a deposition  
704 of any witness to be taken for use as evidence at the hearing,  
705 including a witness who cannot be subpoenaed for or is unable to  
706 attend a hearing. The arbitrator shall determine the conditions  
707 under which the deposition is taken. ~~On application of a party~~  
708 ~~to the arbitration and for use as evidence, the arbitrators, or~~  
709 ~~the umpire in the course of her or his jurisdiction, may permit~~  
710 ~~a deposition to be taken, in the manner and upon the terms~~  
711 ~~designated by them or her or him of a witness who cannot be~~  
712 ~~subpoenaed or is unable to attend the hearing.~~

713           (3) An arbitrator may permit such discovery as the  
714 arbitrator decides is appropriate in the circumstances, taking  
715 into account the needs of the parties to the arbitration  
716 proceeding and other affected persons and the desirability of  
717 making the proceeding fair, expeditious, and cost effective. ~~All~~  
718 ~~provisions of law compelling a person under subpoena to testify~~  
719 ~~are applicable.~~

720           (4) If an arbitrator permits discovery under subsection  
721 (3), the arbitrator may order a party to the arbitration  
722 proceeding to comply with the arbitrator's discovery-related  
723 orders, issue subpoenas for the attendance of a witness and for  
724 the production of records and other evidence at a discovery  
725 proceeding, and take action against a noncomplying party to the  
726 extent a court could if the controversy were the subject of a  
727 civil action in this state.

728           (5) An arbitrator may issue a protective order to prevent

CS/HB 963

2012

729 the disclosure of privileged information, confidential  
730 information, trade secrets, and other information protected from  
731 disclosure to the extent a court could if the controversy were  
732 the subject of a civil action in this state.

733 (6) All laws compelling a person under subpoena to testify  
734 and all fees for attending a judicial proceeding, a deposition,  
735 or a discovery proceeding as a witness apply to an arbitration  
736 proceeding as if the controversy were the subject of a civil  
737 action in this state.

738 (7) The court may enforce a subpoena or discovery-related  
739 order for the attendance of a witness within this state and for  
740 the production of records and other evidence issued by an  
741 arbitrator in connection with an arbitration proceeding in  
742 another state upon conditions determined by the court so as to  
743 make the arbitration proceeding fair, expeditious, and cost  
744 effective. A subpoena or discovery-related order issued by an  
745 arbitrator in another state must be served in the manner  
746 provided by law for service of subpoenas in a civil action in  
747 this state and, upon motion to the court by a party to the  
748 arbitration proceeding or the arbitrator, enforced in the manner  
749 provided by law for enforcement of subpoenas in a civil action  
750 in this state.

751 (8)-(4) Fees for attendance as a witness shall be the same  
752 as for a witness in the circuit court.

753 Section 19. Section 682.081, Florida Statutes, is created  
754 to read:

755 682.081 Judicial enforcement of preaward ruling by  
756 arbitrator.-

757 (1) Except as provided in subsection (2), if an arbitrator  
758 makes a preaward ruling in favor of a party to the arbitration  
759 proceeding, the party may request that the arbitrator  
760 incorporate the ruling into an award under s. 682.12. A  
761 prevailing party may make a motion to the court for an expedited  
762 order to confirm the award under s. 682.12, in which case the  
763 court shall summarily decide the motion. The court shall issue  
764 an order to confirm the award unless the court vacates,  
765 modifies, or corrects the award under s. 682.13 or s. 682.14.

766 (2) A party to a provisional remedy award for injunctive  
767 or equitable relief may make a motion to the court seeking to  
768 confirm or vacate the provisional remedy award.

769 (a) The court shall confirm a provisional remedy award for  
770 injunctive or equitable relief if the award satisfies the legal  
771 standards for awarding a party injunctive or equitable relief.

772 (b) The court shall vacate a provisional remedy award for  
773 injunctive or equitable relief which fails to satisfy the legal  
774 standards for awarding a party injunctive or equitable relief.

775 Section 20. Section 682.09, Florida Statutes, is amended  
776 to read:

777 682.09 Award.—

778 (1) An arbitrator shall make a record of an award. The  
779 record must be signed or otherwise authenticated by any  
780 arbitrator who concurs with the award. The arbitrator or the  
781 arbitration organization shall give notice of the award,  
782 including a copy of the award, to each party to the arbitration  
783 proceeding. ~~The award shall be in writing and shall be signed by~~  
784 ~~the arbitrators joining in the award or by the umpire in the~~

785 ~~course of his or her jurisdiction. They or he or she shall~~  
 786 ~~deliver a copy to each party to the arbitration either~~  
 787 ~~personally or by registered or certified mail, or as provided in~~  
 788 ~~the agreement or provision.~~

789 (2) An award must be made within the time specified by the  
 790 agreement to arbitrate or, if not specified therein, within the  
 791 time ordered by the court. The court may extend, or the parties  
 792 to the arbitration proceeding may agree in a record to extend,  
 793 the time. The court or the parties may do so within or after the  
 794 time specified or ordered. A party waives any objection that an  
 795 award was not timely made unless the party gives notice of the  
 796 objection to the arbitrator before receiving notice of the  
 797 award. ~~An award shall be made within the time fixed therefor by~~  
 798 ~~the agreement or provision for arbitration or, if not so fixed,~~  
 799 ~~within such time as the court may order on application of a~~  
 800 ~~party to the arbitration. The parties may, by written agreement,~~  
 801 ~~extend the time either before or after the expiration thereof.~~  
 802 ~~Any objection that an award was not made within the time~~  
 803 ~~required is waived unless the objecting party notifies the~~  
 804 ~~arbitrators or umpire in writing of his or her objection prior~~  
 805 ~~to the delivery of the award to him or her.~~

806 Section 21. Section 682.10, Florida Statutes, is amended  
 807 to read:

808 682.10 Change of award by arbitrators ~~or umpire.~~

809 (1) On motion to an arbitrator by a party to an  
 810 arbitration proceeding, the arbitrator may modify or correct an  
 811 award:

812 (a) Upon a ground stated in s. 682.14(1)(a) or (c);

CS/HB 963

2012

813 (b) Because the arbitrator has not made a final and  
814 definite award upon a claim submitted by the parties to the  
815 arbitration proceeding; or

816 (c) To clarify the award.

817 (2) A motion under subsection (1) must be made and notice  
818 given to all parties within 20 days after the movant receives  
819 notice of the award.

820 (3) A party to the arbitration proceeding must give notice  
821 of any objection to the motion within 10 days after receipt of  
822 the notice.

823 (4) If a motion to the court is pending under s. 682.12,  
824 s. 682.13, or s. 682.14, the court may submit the claim to the  
825 arbitrator to consider whether to modify or correct the award:

826 (a) Upon a ground stated in s. 682.14(1)(a) or (c);

827 (b) Because the arbitrator has not made a final and  
828 definite award upon a claim submitted by the parties to the  
829 arbitration proceeding; or

830 (c) To clarify the award.

831 (5) An award modified or corrected pursuant to this  
832 section is subject to ss. 682.09(1), 682.12, 682.13, and 682.14.

833 ~~On application of a party to the arbitration, or if an~~  
834 ~~application to the court is pending under s. 682.12, s. 682.13~~  
835 ~~or s. 682.14, on submission to the arbitrators, or to the umpire~~  
836 ~~in the case of an umpire's award, by the court under such~~  
837 ~~conditions as the court may order, the arbitrators or umpire may~~  
838 ~~modify or correct the award upon the grounds stated in s.~~  
839 ~~682.14(1)(a) and (c) or for the purpose of clarifying the award.~~  
840 ~~The application shall be made within 20 days after delivery of~~

CS/HB 963

2012

841 ~~the award to the applicant. Written notice thereof shall be~~  
842 ~~given forthwith to the other party to the arbitration, stating~~  
843 ~~that he or she must serve his or her objections thereto, if any,~~  
844 ~~within 10 days from the notice. The award so modified or~~  
845 ~~corrected is subject to the provisions of ss. 682.12-682.14.~~

846 Section 22. Section 682.11, Florida Statutes, is amended  
847 to read:

848 682.11 Remedies; fees and expenses of arbitration  
849 proceeding.-

850 (1) An arbitrator may award punitive damages or other  
851 exemplary relief if such an award is authorized by law in a  
852 civil action involving the same claim and the evidence produced  
853 at the hearing justifies the award under the legal standards  
854 otherwise applicable to the claim.

855 (2) An arbitrator may award reasonable attorney fees and  
856 other reasonable expenses of arbitration if such an award is  
857 authorized by law in a civil action involving the same claim or  
858 by the agreement of the parties to the arbitration proceeding.

859 (3) As to all remedies other than those authorized by  
860 subsections (1) and (2), an arbitrator may order such remedies  
861 as the arbitrator considers just and appropriate under the  
862 circumstances of the arbitration proceeding. The fact that such  
863 a remedy could not or would not be granted by the court is not a  
864 ground for refusing to confirm an award under s. 682.12 or for  
865 vacating an award under s. 682.13.

866 (4) An arbitrator's expenses and fees, together with other  
867 expenses, must be paid as provided in the award.

868 (5) If an arbitrator awards punitive damages or other

869 exemplary relief under subsection (1), the arbitrator shall  
 870 specify in the award the basis in fact justifying and the basis  
 871 in law authorizing the award and state separately the amount of  
 872 the punitive damages or other exemplary relief. Unless otherwise  
 873 provided in the agreement or provision for arbitration, the  
 874 arbitrators' and umpire's expenses and fees, together with other  
 875 expenses, not including counsel fees, incurred in the conduct of  
 876 the arbitration, shall be paid as provided in the award.

877 Section 23. Section 682.12, Florida Statutes, is amended  
 878 to read:

879 682.12 Confirmation of an award.—After a party to an  
 880 arbitration proceeding receives notice of an award, the party  
 881 may make a motion to the court for an order confirming the award  
 882 at which time the court shall issue a confirming order unless  
 883 the award is modified or corrected pursuant to s. 682.10 or s.  
 884 682.14 or is vacated pursuant to s. 682.13. ~~Upon application of~~  
 885 a party to the arbitration, the court shall confirm an award,  
 886 unless within the time limits hereinafter imposed grounds are  
 887 urged for vacating or modifying or correcting the award, in  
 888 which case the court shall proceed as provided in ss. 682.13 and  
 889 682.14.

890 Section 24. Section 682.13, Florida Statutes, is amended  
 891 to read:

892 682.13 Vacating an award.—

893 (1) Upon motion application of a party to an arbitration  
 894 proceeding, the court shall vacate an arbitration award if when:

895 (a) The award was procured by corruption, fraud, or other  
 896 undue means; ~~;~~



897 (b) There was :  
 898 1. Evident partiality by an arbitrator appointed as a  
 899 neutral arbitrator;  
 900 2. Corruption by an arbitrator; or  
 901 3. Misconduct by an arbitrator prejudicing the rights of a  
 902 party to the arbitration proceeding; ~~or corruption in any of the~~  
 903 ~~arbitrators or umpire or misconduct prejudicing the rights of~~  
 904 ~~any party.~~

905 (c) An arbitrator refused to postpone the hearing upon  
 906 showing of sufficient cause for postponement, refused to hear  
 907 evidence material to the controversy, or otherwise conducted the  
 908 hearing contrary to s. 682.06, so as to prejudice substantially  
 909 the rights of a party to the arbitration proceeding; ~~The~~  
 910 ~~arbitrators or the umpire in the course of her or his~~  
 911 ~~jurisdiction exceeded their powers.~~

912 (d) An arbitrator exceeded the arbitrator's powers; ~~The~~  
 913 ~~arbitrators or the umpire in the course of her or his~~  
 914 ~~jurisdiction refused to postpone the hearing upon sufficient~~  
 915 ~~cause being shown therefor or refused to hear evidence material~~  
 916 ~~to the controversy or otherwise so conducted the hearing,~~  
 917 ~~contrary to the provisions of s. 682.06, as to prejudice~~  
 918 ~~substantially the rights of a party.~~

919 (e) There was no agreement to arbitrate, unless the person  
 920 participated in the arbitration proceeding without raising the  
 921 objection under s. 682.06(3) not later than the beginning of the  
 922 arbitration hearing; ~~or There was no agreement or provision for~~  
 923 ~~arbitration subject to this law, unless the matter was~~  
 924 ~~determined in proceedings under s. 682.03 and unless the party~~

CS/HB 963

2012

925 ~~participated in the arbitration hearing without raising the~~  
926 ~~objection.~~

927 (f) The arbitration was conducted without proper notice of  
928 the initiation of an arbitration as required in s. 682.032 so as  
929 to prejudice substantially the rights of a party to the  
930 arbitration proceeding.

931 ~~But the fact that the relief was such that it could not or would~~  
932 ~~not be granted by a court of law or equity is not ground for~~  
933 ~~vacating or refusing to confirm the award.~~

934 (2) A motion under this section must be filed within 90  
935 days after the movant receives notice of the award pursuant to  
936 s. 682.09 or within 90 days after the movant receives notice of  
937 a modified or corrected award pursuant to s. 682.10, unless the  
938 movant alleges that the award was procured by corruption, fraud,  
939 or other undue means, in which case the motion must be made  
940 within 90 days after the ground is known or by the exercise of  
941 reasonable care would have been known by the movant. An  
942 ~~application under this section shall be made within 90 days~~  
943 ~~after delivery of a copy of the award to the applicant, except~~  
944 ~~that, if predicated upon corruption, fraud or other undue means,~~  
945 ~~it shall be made within 90 days after such grounds are known or~~  
946 ~~should have been known.~~

947 (3) If the court vacates an award on a ground other than  
948 that set forth in paragraph (1)(e), it may order a rehearing. If  
949 the award is vacated on a ground stated in paragraph (1)(a) or  
950 paragraph (1)(b), the rehearing must be before a new arbitrator.  
951 If the award is vacated on a ground stated in paragraph (1)(c),  
952 paragraph (1)(d), or paragraph (1)(f), the rehearing may be

953 before the arbitrator who made the award or the arbitrator's  
 954 successor. The arbitrator must render the decision in the  
 955 rehearing within the same time as that provided in s. 682.09(2)  
 956 for an award. ~~In vacating the award on grounds other than those~~  
 957 ~~stated in paragraph (1)(e), the court may order a rehearing~~  
 958 ~~before new arbitrators chosen as provided in the agreement or~~  
 959 ~~provision for arbitration or by the court in accordance with s.~~  
 960 ~~682.04, or, if the award is vacated on grounds set forth in~~  
 961 ~~paragraphs (1)(e) and (d), the court may order a rehearing~~  
 962 ~~before the arbitrators or umpire who made the award or their~~  
 963 ~~successors appointed in accordance with s. 682.04. The time~~  
 964 ~~within which the agreement or provision for arbitration requires~~  
 965 ~~the award to be made is applicable to the rehearing and~~  
 966 ~~commences from the date of the order therefor.~~

967 (4) If a motion ~~the application~~ to vacate is denied and no  
 968 motion to modify or correct the award is pending, the court  
 969 shall confirm the award.

970 Section 25. Section 682.14, Florida Statutes, is amended  
 971 to read:

972 682.14 Modification or correction of award.—

973 (1) Upon motion made within 90 days after the movant  
 974 receives notice of the award pursuant to s. 682.09 or within 90  
 975 days after the movant receives notice of a modified or corrected  
 976 award pursuant to s. 682.10, the court shall modify or correct  
 977 the award if ~~Upon application made within 90 days after delivery~~  
 978 ~~of a copy of the award to the applicant, the court shall modify~~  
 979 ~~or correct the award when:~~

980 (a) There is an evident miscalculation of figures or an

981 evident mistake in the description of any person, thing, or  
 982 property referred to in the award.

983 (b) The arbitrators ~~or umpire~~ have awarded upon a matter  
 984 not submitted in the arbitration ~~to them or him or her~~ and the  
 985 award may be corrected without affecting the merits of the  
 986 decision upon the issues submitted.

987 (c) The award is imperfect as a matter of form, not  
 988 affecting the merits of the controversy.

989 (2) If the application is granted, the court shall modify  
 990 and correct the award ~~so as to effect its intent~~ and shall  
 991 confirm the award as so modified and corrected. Otherwise,  
 992 unless a motion to vacate the award under s. 682.13 is pending,  
 993 the court shall confirm the award as made.

994 (3) An application to modify or correct an award may be  
 995 joined in the alternative with an application to vacate the  
 996 award under s. 682.13.

997 Section 26. Section 682.15, Florida Statutes, is amended  
 998 to read:

999 682.15 Judgment or decree on award.—

1000 (1) Upon granting an order confirming, vacating without  
 1001 directing a rehearing, modifying, or correcting an award, the  
 1002 court shall enter a judgment in conformity therewith. The  
 1003 judgment may be recorded, docketed, and enforced as any other  
 1004 judgment in a civil action.

1005 (2) A court may allow reasonable costs of the motion and  
 1006 subsequent judicial proceedings.

1007 (3) On motion of a prevailing party to a contested  
 1008 judicial proceeding under s. 682.12, s. 682.13, or s. 682.14,

CS/HB 963

2012

1009 the court may add reasonable attorney fees and other reasonable  
 1010 expenses of litigation incurred in a judicial proceeding after  
 1011 the award is made to a judgment confirming, vacating without  
 1012 directing a rehearing, modifying, or correcting an award. ~~Upon~~  
 1013 ~~the granting of an order confirming, modifying or correcting an~~  
 1014 ~~award, judgment or decree shall be entered in conformity~~  
 1015 ~~therewith and be enforced as any other judgment or decree. Costs~~  
 1016 ~~of the application and of the proceedings subsequent thereto,~~  
 1017 ~~and disbursements may be awarded by the court.~~

1018 Section 27. Section 682.16, Florida Statutes, is repealed.

1019 Section 28. Section 682.17, Florida Statutes, is repealed.

1020 Section 29. Section 682.18, Florida Statutes, is repealed.

1021 Section 30. Section 682.181, Florida Statutes, is created  
 1022 to read:

1023 682.181 Jurisdiction.—

1024 (1) A court of this state having jurisdiction over the  
 1025 controversy and the parties may enforce an agreement to  
 1026 arbitrate.

1027 (2) An agreement to arbitrate providing for arbitration in  
 1028 this state confers exclusive jurisdiction on the court to enter  
 1029 judgment on an award under this chapter.

1030 Section 31. Section 682.19, Florida Statutes, is amended  
 1031 to read:

1032 682.19 Venue.—A petition pursuant to s. 682.015 must be  
 1033 filed in the court of the county in which the agreement to  
 1034 arbitrate specifies the arbitration hearing is to be held or, if  
 1035 the hearing has been held, in the court of the county in which  
 1036 it was held. Otherwise, the petition may be made in the court of

1037 any county in which an adverse party resides or has a place of  
 1038 business or, if no adverse party has a residence or place of  
 1039 business in this state, in the court of any county in this  
 1040 state. All subsequent petitions must be made in the court  
 1041 hearing the initial petition unless the court otherwise directs.

1042 ~~Any application under this law may be made to the court of the~~  
 1043 ~~county in which the other party to the agreement or provision~~  
 1044 ~~for arbitration resides or has a place of business, or, if she~~  
 1045 ~~or he has no residence or place of business in this state, then~~  
 1046 ~~to the court of any county. All applications under this law~~  
 1047 ~~subsequent to an initial application shall be made to the court~~  
 1048 ~~hearing the initial application unless it shall order otherwise.~~

1049 Section 32. Section 682.20, Florida Statutes, is amended  
 1050 to read:

1051 682.20 Appeals.—

1052 (1) An appeal may be taken from:

1053 (a) An order denying an application to compel arbitration  
 1054 made under s. 682.03.

1055 (b) An order granting a motion ~~an application~~ to stay  
 1056 arbitration pursuant to ~~made under~~ s. 682.03(2)-(4).

1057 (c) An order confirming ~~or denying confirmation of~~ an  
 1058 award.

1059 (d) An order denying confirmation of an award unless the  
 1060 court has entered an order under s. 682.10(4) or s. 682.13. All  
 1061 other orders denying confirmation of an award are final orders.

1062 (e) ~~(d)~~ An order modifying or correcting an award.

1063 (f) ~~(e)~~ An order vacating an award without directing a  
 1064 rehearing.

1065            (g) ~~(f)~~ A judgment or decree entered pursuant to this  
 1066 chapter ~~the provisions of this law.~~

1067            (2) The appeal shall be taken in the manner and to the  
 1068 same extent as from orders or judgments in a civil action.

1069            Section 33. Section 682.21, Florida Statutes, is repealed.

1070            Section 34. Section 682.22, Florida Statutes, is repealed.

1071            Section 35. Section 682.23, Florida Statutes, is created  
 1072 to read:

1073            682.23 Relationship to Electronic Signatures in Global and  
 1074 National Commerce Act.—The provisions of this chapter governing  
 1075 the legal effect, validity, and enforceability of electronic  
 1076 records or electronic signatures and of contracts performed with  
 1077 the use of such records or signatures conform to the  
 1078 requirements of s. 102 of the Electronic Signatures in Global  
 1079 and National Commerce Act, 15 U.S.C. s. 7002.

1080            Section 36. Section 682.25, Florida Statutes, is created  
 1081 to read:

1082            682.25 Disputes excluded.—This chapter does not apply to  
 1083 any dispute involving child custody, visitation, or child  
 1084 support.

1085            Section 37. Section 44.104, Florida Statutes, is amended  
 1086 to read:

1087            44.104 Voluntary ~~binding arbitration and voluntary~~ trial  
 1088 resolution.—

1089            (1) Two or more opposing parties who are involved in a  
 1090 civil dispute may agree in writing to submit the controversy to  
 1091 ~~voluntary binding arbitration, or voluntary trial resolution, in~~  
 1092 lieu of judicial litigation of the issues involved, prior to or

CS/HB 963

2012

1093 after a lawsuit has been filed, ~~provided no constitutional issue~~  
1094 ~~is involved.~~

1095 (2) If the parties have entered into such an agreement and  
1096 the agreement ~~which provides in voluntary binding arbitration~~  
1097 ~~for a method for appointing of one or more arbitrators, or which~~  
1098 ~~provides in voluntary trial resolution a method for appointing~~  
1099 ~~the a member of The Florida Bar in good standing for more than 5~~  
1100 ~~years to act as trial resolution judge, that method shall be~~  
1101 ~~followed the court shall proceed with the appointment as~~  
1102 ~~prescribed. However, in voluntary binding arbitration at least~~  
1103 ~~one of the arbitrators, who shall serve as the chief arbitrator,~~  
1104 ~~shall meet the qualifications and training requirements adopted~~  
1105 ~~pursuant to s. 44.106. In the absence of an agreement on a~~  
1106 ~~method for appointing the trial resolution judge, or if the~~  
1107 ~~agreement method fails or for any reason cannot be followed, and~~  
1108 ~~the parties fail to agree on the person to serve as the trial~~  
1109 ~~resolution judge, the court, on application of a party, shall~~  
1110 ~~appoint one or more qualified arbitrators, or the trial~~  
1111 ~~resolution judge, as the case requires.~~

1112 (3) A trial resolution judge must have agreed to serve and  
1113 must be a member of The Florida Bar in good standing for 5 years  
1114 or more.

1115 (4)-(3) The ~~arbitrators or~~ trial resolution judge shall be  
1116 compensated by the parties according to their agreement with the  
1117 trial resolution judge.

1118 (5)-(4) Within 10 days after the submission of the request  
1119 for ~~binding arbitration, or~~ voluntary trial resolution, the  
1120 court shall provide for the appointment of the ~~arbitrator or~~



CS/HB 963

2012

1121 ~~arbitrators, or~~ trial resolution judge, as the case requires.  
1122 Once appointed, the ~~arbitrators or~~ trial resolution judge shall  
1123 notify the parties of the time and place for the hearing.

1124 (6)~~(5)~~ Application for ~~voluntary binding arbitration or~~  
1125 voluntary trial resolution shall be filed and fees paid to the  
1126 clerk of court as if for complaints initiating civil actions.  
1127 The clerk of the court shall handle and account for these  
1128 matters in all respects as if they were civil actions, except  
1129 that the clerk of court shall keep separate ~~the records of the~~  
1130 ~~applications for voluntary binding arbitration and~~ the records  
1131 of the applications for voluntary trial resolution from all  
1132 other civil actions.

1133 (7)~~(6)~~ Filing of the application for ~~binding arbitration~~  
1134 ~~or~~ voluntary trial resolution tolls ~~will toll~~ the running of the  
1135 applicable statutes of limitation.

1136 (8)~~(7)~~ The ~~chief arbitrator or~~ trial resolution judge may  
1137 administer oaths or affirmations and conduct the proceedings as  
1138 the rules of court shall provide. At the request of any party,  
1139 the ~~chief arbitrator or~~ trial resolution judge shall issue  
1140 subpoenas for the attendance of witnesses and for the production  
1141 of books, records, documents, and other evidence and may apply  
1142 to the court for orders compelling attendance and production.  
1143 Subpoenas shall be served and shall be enforceable in the manner  
1144 provided by law. The trial resolution judge may order temporary  
1145 relief in the same manner, and to the same extent, as in civil  
1146 actions generally. Any party may enforce such an order by filing  
1147 a petition in the court. Orders entered by the court are  
1148 reviewable by the appellate court in the same manner, and to the

1149 same extent, as orders in civil actions generally.

1150 ~~(9)(8) A voluntary binding arbitration hearing shall be~~  
 1151 ~~conducted by all of the arbitrators, but a majority may~~  
 1152 ~~determine any question and render a final decision.~~ A trial  
 1153 resolution judge shall conduct a voluntary trial resolution  
 1154 hearing. The trial resolution judge may determine any question  
 1155 and render a final decision.

1156 ~~(10)(9)~~ The Florida Evidence Code and Florida Rules of  
 1157 Civil Procedure shall apply to all proceedings under this  
 1158 section, except that voluntary trial resolution is not governed  
 1159 by procedural rules regulating general and special magistrates,  
 1160 and rulings of the trial resolution judge are not reviewable by  
 1161 filing exceptions with the court.

1162 ~~(10) An appeal of a voluntary binding arbitration decision~~  
 1163 ~~shall be taken to the circuit court and shall be limited to~~  
 1164 ~~review on the record and not de novo, of:~~

1165 ~~(a) Any alleged failure of the arbitrators to comply with~~  
 1166 ~~the applicable rules of procedure or evidence.~~

1167 ~~(b) Any alleged partiality or misconduct by an arbitrator~~  
 1168 ~~prejudicing the rights of any party.~~

1169 ~~(c) Whether the decision reaches a result contrary to the~~  
 1170 ~~Constitution of the United States or of the State of Florida.~~

1171 (11) Any party may enforce a final decision rendered in a  
 1172 voluntary trial by filing a petition for final judgment in the  
 1173 circuit court in the circuit in which the voluntary trial took  
 1174 place. Upon entry of final judgment by the circuit court, any  
 1175 party may appeal to the appropriate appellate court. The  
 1176 judgment is reviewable by the appellate court in the same

1177 manner, and to the same extent, as a judgment in a civil action.  
 1178 ~~Factual findings determined in the voluntary trial are not~~  
 1179 ~~subject to appeal.~~

1180 ~~(12) The harmless error doctrine shall apply in all~~  
 1181 ~~appeals. No further review shall be permitted unless a~~  
 1182 ~~constitutional issue is raised.~~

1183 (12) ~~(13)~~ If no appeal is taken within the time provided by  
 1184 rules promulgated by the Supreme Court, ~~then~~ the decision shall  
 1185 be referred to the presiding judge in the case, or if one has  
 1186 not been assigned, then to the chief judge of the circuit for  
 1187 assignment to a circuit judge, who shall enter such orders and  
 1188 judgments as are required to carry out the terms of the  
 1189 decision. Equitable remedies are, ~~which orders shall be~~  
 1190 ~~enforceable by the contempt powers of the court~~ to the same  
 1191 extent as in civil actions generally. When a judgment provides  
 1192 for execution, and for which judgments execution shall issue on  
 1193 request of a party.

1194 (13) ~~(14)~~ This section does ~~shall~~ not apply to ~~any dispute~~  
 1195 ~~involving child custody, visitation, or child support, or to any~~  
 1196 ~~dispute~~ that ~~which~~ involves the rights of a third party not a  
 1197 party to the ~~arbitration or~~ voluntary trial resolution when the  
 1198 third party would be an indispensable party if the dispute were  
 1199 resolved in court or when the third party notifies ~~the chief~~  
 1200 ~~arbitrator or~~ the trial resolution judge that the third party  
 1201 would be a proper party if the dispute were resolved in court,  
 1202 that the third party intends to intervene in the action in  
 1203 court, and that the third party does not agree to proceed under  
 1204 this section.

1205       (14) A trial resolution judge does not have jurisdiction  
 1206 to declare unconstitutional a statute, ordinance, or provision  
 1207 of a constitution. If any such claim is made in the voluntary  
 1208 trial resolution proceeding, that claim shall be severed and  
 1209 adjudicated by a judge of the court.

1210       (15) The parties may agree to a trial by a privately  
 1211 selected jury. The court's jury pool may not be used for this  
 1212 purpose. In all other cases, the trial resolution judge shall  
 1213 conduct a bench trial.

1214       Section 38. Subsection (1) of section 44.107, Florida  
 1215 Statutes, is amended to read:

1216       44.107 Immunity for arbitrators, voluntary trial  
 1217 resolution judges, mediators, and mediator trainees.-

1218       (1) Arbitrators serving under s. 44.103, voluntary trial  
 1219 resolution judges serving under ~~or~~ s. 44.104, mediators serving  
 1220 under s. 44.102, and trainees fulfilling the mentorship  
 1221 requirements for certification by the Supreme Court as a  
 1222 mediator ~~shall~~ have judicial immunity in the same manner and to  
 1223 the same extent as a judge.

1224       Section 39. Section 440.1926, Florida Statutes, is amended  
 1225 to read:

1226       440.1926 Alternate dispute resolution; claim arbitration.-  
 1227 Notwithstanding any other provision of this chapter, the  
 1228 employer, carrier, and employee may mutually agree to seek  
 1229 consent from a judge of compensation claims to enter into  
 1230 binding claim arbitration in lieu of any other remedy provided  
 1231 for in this chapter to resolve all issues in dispute regarding  
 1232 an injury. Arbitrations agreed to pursuant to this section shall

CS/HB 963

2012

1233 be governed by chapter 682, the Revised Florida Arbitration  
 1234 Code, except that, notwithstanding any provision in chapter 682,  
 1235 the term "court" shall mean a judge of compensation claims. An  
 1236 arbitration award in accordance with this section is ~~shall be~~  
 1237 enforceable in the same manner and with the same powers as any  
 1238 final compensation order.

1239 Section 40. Paragraph (a) of subsection (1) of section  
 1240 489.1402, Florida Statutes, is amended to read:

1241 489.1402 Homeowners' Construction Recovery Fund;  
 1242 definitions.—

1243 (1) The following definitions apply to ss. 489.140-  
 1244 489.144:

1245 (a) "Arbitration" means alternative dispute resolution  
 1246 entered into between a claimant and a contractor either pursuant  
 1247 to a construction contract that contains a mandatory arbitration  
 1248 clause or through any binding arbitration under chapter 682, the  
 1249 Revised Florida Arbitration Code.

1250 Section 41. Subsection (2) of section 731.401, Florida  
 1251 Statutes, is amended to read:

1252 731.401 Arbitration of disputes.—

1253 (2) Unless otherwise specified in the will or trust, a  
 1254 will or trust provision requiring arbitration shall be presumed  
 1255 to require binding arbitration under chapter 682, the Revised  
 1256 Florida Arbitration Code ~~s. 44.104~~.

1257 Section 42. The Division of Statutory Revision is directed  
 1258 to redesignate the title of chapter 44, Florida Statutes, as  
 1259 "Alternative Dispute Resolution."

1260 Section 43. This act shall take effect July 1, 2012.